IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 13145 of 2002

Date of Decision : October 19, 2007

Gurbax Singh and Others.

.... Petitioners

Versus

State of Punjab and others.

.... Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. R.K. Arora, Advocate,
for the petitioners.

Mr. Palvinder Singh, Senior Deputy Advocate General, Punjab,
for respondent Nos. 1 and 2.

None for respondent No. 3.

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S.D. Anand, J.

The petitioners filed the present writ petition on averments which may be indicated as under:-

Vide resolution No. 135/11 dated 03.12.1994 (Annexure P/1), respondent No.3 – Municipal Council, Raikot (hereinafter referred to as "the respondent-Council") appointed petitioner Nos. 1 and 2 (Gurbax Singh and Kuldeep Kumar) to the post of Clerk for a period of six months and on

consolidated salary. Vide that very resolution, the respondent-Council appointed petitioner no.2 – Rajiv Kumar as a Sewadar for the above indicated duration and on a consolidated salary. In view of their satisfactory performance of duties, all the three petitioners were granted "further extension from time to time". In the year 1997, two posts of Clerks fell vacant in the office of respondent-Council which (Council) passed a unanimous resolution (No. 10/76 dated 29.08.1997-Annexure P/3) granting regular appointment to petitioner Nos. 1 and 2. Likewise, the respondent-Council passed a unanimous resolution (No.277/11 dated 30.03.2001-Annexure P/4) to regularize the services of all the three petitioners. Those resolutions were sent to the State of Punjab (in the Department of Local Bodies), hereinafter referred to as "the respondent-State". The respondent-State did not approve those resolutions in spite of the fact that vacancies are still available under the respondent-Council which can be filled up by regularising the services of the petitioners. The respondent-State issued instructions dated 23.01.2001 (Annexure P/6) whereby it was decided to regularise the services of all those daily wager, work charged and other categories of employees who have completed minimum three years of their service. On the basis of those instructions, the services of a number of similarly circumstanced employees have already been regularised.

It was on the above averments that the petitioners applied for the issuance of a writ declaring the action on the part of the respondent-State and also the Director, Local Bodies (respondent No.2) in not granting approval to the resolution No. 277/11 dated 30.03.2001 and resolution 31/146 dated 31.05.2002 as arbitrary and unconstitutional. Also sought was a writ directing the respondents to grant approval to the resolutions

aforementioned forthwith and regularise the services of the petitioners along with all consequential benefits. The petitioners averred that they may be allowed wages for the period they performed their duties in the minimum of the regular pay scale admissible to their regular counter-parts. Further averment in the context was that the respondents may pay to the petitioners wages in the minimum of the regular pay scale plus D.A. etc. till their claim for regularisation is accepted.

The respondents contested the petition. A joint written statement was filed by respondent Nos. 1 and 2; while an independent written statement was filed by respondent No.3. Insofar as respondent No.3 is concerned, it did not dispute the appointment of the petitioners on contract basis and on a fixed salary. It was averred, in that context, that the Director, Local Bodies, Punjab (respondent No.2) had "while sanctioning these posts vide his Memo No. Estt-2-DSS-94/27137, dated 17.08.1994 (Annexure R/1), imposed the condition that these posts be filled up on contract basis for six months on fixed pay". It also conceded that the above resolutions were passed for regularising the services of the petitioners but those resolutions were not approved by the respondent-State. Further plea was that the relief applied for by the petitioners may not be granted in view of the fact that the petitiones had, of their free volition, accepted a contractual appointment and they cannot be heard to insist upon their regularisation.

Respondent Nos. 1 and 2 conceded the issuance of policy instruction dated 23.01.2001 (Annexure P/6) but averred that those instructions are not applicable to the contractual employees. The further averment was that "there are no regular sanctioned posts with the

respondent No.3, as such the services of petitioner cannot be regularized".

I have heard learned counsel for the parties and have carefully gone through the record.

As would be apparent from a perusal of the policy instructions (Annexure P/6) relied upon on behalf of the petitioners, those pertain to the regularisation of services of all categories of employees except the contractual employees. By the very nature of things, a contractual employee is appointed for a fixed period and on fixed wages. An employee appointed on contract basis does not join the mainstream of other employees. It might well be that the appointment is made for a fixed period in order to co-inside with the completion of a particular project/assignment. As against it, the employees appointed on ad hoc basis would be on an entirely different footing. In the present case, there is a precise averment made by respondent No.3 that respondent No.2 had "while sanctioning these posts vide his Memo No. Estt-2-DSS-94/27137, dated 17.08.1994 (Annxure R/1), imposed the condition that these posts be filled up on contract basis for six months on fixed pay". Thus, it is the order granting sanction of those posts which would govern the nature thereof. Though the appointment of the petitioners came to be extended from time to time, it has to be noticed in particular that their appointment continued to be contractual in nature and on fixed wages. In the light thereof, the reliance placed by the learned counsel for the petitioners upon policy instructions dated 23.01.2001 (Annexure P/6) and the judgments rendered by the Apex Court in **2006(3) SCT, 803 (Mineral Exploration Corporation Employees Union versus Mineral Exploration Corporation and another)**, **Civil Appeal No. 7995 of 2002 (State of Punjab and others versus Lakhwinder Singh and others, decided on**

07.09.2006) and Civil Appeal No. 1269 of 2001 (State of Punjab and another versus Gurcharan Singh Kahlon and other, decided on 26.04.2007) cannot be said to be adequate enough to aid the petitioners' plea, for want of applicability. Those judicial pronouncements do not relate to the employees appointed on contract basis, obviously for a fixed duration and on fixed wages.

The petition is accordingly held to be devoid of merit and is ordered to be dismissed.

October 19, 2007 **(S.D. Anand)**
vkd **Judge**

Notes:

1. Whether reporter of Local Newspapers may be allowed to see the judgment?

2. To be referred to the reporters or not?

3. Whether the judgment should be reported in the Digest?